



Reprinted
March 4, 1999

HOUSE BILL No. 1098

DIGEST OF HB 1098 (Updated March 3, 1999 3:43 pm - DI 98)

Citations Affected: IC 11-12; IC 12-7; IC 12-17; IC 31-14; IC 31-16.

Synopsis: Child support. Provides that a court may order a person who is delinquent in the payment of child support to participate in a specified work release program for the purpose of using the persons's earnings to satisfy the person's child support arrearage. Provides that a person participating in a work release program due to child support delinquency is not entitled to any of the person's earnings until the child support delinquency is paid in full. Applies to both dissolution of marriage and paternity cases. Allows an action for declaratory or injunctive release, or both, to be brought against a county official who permits or authorizes a person confined in a county jail to perform construction, remodeling, or repair on any public work. Requires the child support bureau of the division of family and children to establish
(Continued next page)

Effective: July 1, 1999.

Dobis, Fesko, Kuzman

January 6, 1999, read first time and referred to Committee on Human Affairs.
February 24, 1999, amended, reported — Do Pass.
March 3, 1999, read second time, amended, ordered engrossed.

HB 1098—LS 6083/DI 98+



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a program to allow a prosecuting attorney to contract with a private organization to provide child support enforcement services. Provides that the child support bureau is not liable for any costs related to a contract between a prosecuting attorney and a private organization for child support enforcement services that are disallowed for reimbursement by the federal government. Requires the child support bureau to treat costs incurred by a prosecuting attorney in contracting with a private organization for child support enforcement services as administrative costs of the prosecuting attorney.

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HB 1098—LS 6083/DI 98+



Reprinted
March 4, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1098

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-12-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person
3 confined in a county jail may be required to keep his own living
4 quarters clean and orderly.
5 (b) A person confined in a county jail upon conviction of a crime
6 may be required to perform general maintenance work and assist in
7 providing other services essential to the administration of the facility
8 or program. As used in this subsection, "general maintenance work"
9 does not include construction, remodeling, or repair of the facility.
10 (c) **An action for declaratory or injunctive relief, or both, may**
11 **be brought:**
12 (1) **against a county official who permits or authorizes a**
13 **person confined in a county jail to perform construction,**
14 **remodeling, or repair on any public work (as defined in**
15 **IC 36-1-12-2); and**
16 (2) **by any taxpaying resident of the county in which the work**
17 **described in subdivision (1) is being performed who is**

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engaged as an employer or employee in the building and construction industry.

The taxpayer is entitled to recover the taxpayer's costs and reasonable attorney's fee if the taxpayer prevails in such suit.

SECTION 2. IC 11-12-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) Any earnings of a person employed under this chapter, less payroll deductions required by law and court ordered deductions for satisfaction of a judgment against that person, **including a judgment regarding delinquent child support described in IC 31-16-16-2**, shall be collected by the county sheriff, probation department, county office of family and children, or other agency designated by the sentencing or committing court. Unless otherwise ordered by the court, the remaining earnings shall be distributed in the following order:

(1) To pay state and federal income taxes and Social Security deductions not otherwise withheld.

(2) To pay the cost of membership in an employee organization.

(3) Not less than fifteen percent (15%) of the person's gross earnings, if that amount of the gross is available after the above deductions, to be given to that person or retained for the person, with accrued interest, until the person's release or discharge. **This subdivision does not apply if the person was ordered to participate in the work release program under IC 31-14-12-3 or IC 31-16-12-6 and the person owes a child support arrearage.**

(4) To pay for the person's room and board provided by the county.

(5) To pay transportation costs to and from work, and other work related incidental expenses.

(6) To pay court ordered costs, fines, or restitution.

(b) After the amounts prescribed in subsection (a) are deducted, the remaining amount may be used to:

(1) when directed by the person or ordered by the court, pay for the support of the person's dependents (if the person's dependents are receiving welfare assistance, the appropriate office of family and children or welfare department in another state shall be notified of such disbursements); and

(2) with the consent of the person, pay to the person's victims or others any unpaid obligations of that person.

(c) **Except as provided in subsection (d)**, any remaining amount shall be given to the person or retained for the person according to subsection (a)(3).



1 (d) If the person:

2 (1) was ordered to participate in the work release program
3 under IC 31-14-12-3 or IC 31-16-12-6; and

4 (2) owes a child support arrearage;

5 any remaining amount shall be forwarded to the clerk of the court
6 for the payment of the person's child support arrearage.

7 ~~(d)~~ (e) The collection of room and board under subsection (a)(4)
8 may be waived.

9 SECTION 3. IC 12-7-2-144.9 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 1999]: Sec. 144.9. "Private organization", for
12 purposes of IC 12-17-2, has the meaning set forth in IC 12-17-2-3.5.

13 SECTION 4. IC 12-17-2-18 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. (a) The bureau shall
15 make the agreements necessary for the effective administration of the
16 plan with local governmental officials within Indiana. The bureau shall
17 contract with:

18 (1) a prosecuting attorney; or

19 (2) a private attorney if the bureau determines that a reasonable
20 contract cannot be entered into with a prosecuting attorney and
21 the determination is approved by at least two-thirds (2/3) of the
22 Indiana child custody and support advisory committee
23 (established under IC 33-2.1-10-1);

24 in each judicial circuit to undertake activities required to be performed
25 under Title IV-D of the federal Social Security Act (42 U.S.C. 651),
26 including determination of paternity, determination and enforcement
27 of child support, activities under the Uniform Reciprocal Enforcement
28 of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate
29 Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the
30 contract is with a prosecuting attorney, prosecutions of welfare fraud.

31 (b) The hiring of an attorney by an agreement or a contract made
32 under this section is not subject to the approval of the attorney general
33 under IC 4-6-5-3. An agreement or a contract made under this section
34 is not subject to IC 4-13-2-14.3 or IC 5-22.

35 (c) Subject to section 18.5 of this chapter, a prosecuting attorney
36 with which the bureau contracts under subsection (a) may contract
37 with a private organization to provide child support enforcement
38 services.

39 SECTION 5. IC 12-17-2-3.5 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
41 1, 1999]: Sec. 3.5. As used in this chapter, "private organization"
42 means a private organization with which a prosecuting attorney



contracts under section 18.5 of this chapter to provide child support enforcement services.

SECTION 6. IC 12-17-2-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18.5. (a) The bureau shall establish a program to allow a prosecuting attorney with which the bureau has contracted under section 18 of this chapter to contract with a private organization to provide child support enforcement services.

(b) The bureau may establish:

(1) a list of approved private organizations with which a prosecuting attorney may contract under this section; and

(2) requirements for participation in the program established under this section to assure:

(A) effective administration of the plan; and

(B) compliance with all federal and state statutes, regulations, and rules.

(c) A contract between a prosecuting attorney and a private organization under this section must include the following provisions:

(1) A provision that records of a contractor operated child support enforcement system are subject to inspection and copying to the same extent the records would be subject to inspection and copying if the contractor were a public agency under IC 5-14-3.

(2) A provision that records that are provided by a contractor to the prosecuting attorney that relate to compliance by the contractor with the terms of the contract are subject to inspection and copying in accordance with IC 5-14-3.

(d) Not later than July 1, 2001, the bureau shall provide the legislative council with a report evaluating the effectiveness of the program established under this section.

(e) The bureau is not liable for any costs related to a contract entered into under this section that are disallowed for reimbursement by the federal government under the Title IV-D program of the federal Social Security Act.

(f) The bureau shall treat costs incurred by a prosecuting attorney under this section as administrative costs of the prosecuting attorney.

SECTION 7. IC 31-14-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) If the court finds that a party is delinquent as a result of an intentional violation of an



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order for support, the court may find the party in contempt of court.

(b) **In addition to any other penalty provided by law**, the court may order a party who is found in contempt of court under this section to **do either of the following**:

(1) Perform community service without compensation in a manner specified by the court.

(2) **Participate in a work release program under IC 11-12-5 for the purpose of using the party's earnings to satisfy the party's child support arrearage.**

(c) **An order issued under subsection (b)(2) may not require a party to participate in a work release program after the party's child support arrearage is paid in full.**

(d) **Unless otherwise ordered by the court, if the court orders a party to participate in a work release program under subsection (b), the party's earnings shall be distributed under IC 11-12-5-3.**

(e) **A noncustodial parent who is ordered to participate in a work release program under subsection (b) is not entitled to any part of the earnings until the noncustodial parent's delinquent child support obligation has been satisfied.**

SECTION 8. IC 31-16-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) If the court finds that a party is delinquent as a result of an intentional violation of an order for support, the court may find the party in contempt of court.

(b) **In addition to any other penalty provided by law**, the court may order a party who is found in contempt of court under this section to **do either of the following**:

(1) Perform community service without compensation in a manner specified by the court.

(2) **Participate in a work release program under IC 11-12-5 for the purpose of using the party's earnings to satisfy the party's child support arrearage.**

(c) **An order issued under subsection (b)(2) may not require a party to participate in a work release program after the party's child support arrearage is paid in full.**

(d) **Unless otherwise ordered by the court, if the court orders a party to participate in a work release program under subsection (b), the party's earnings shall be distributed under IC 11-12-5-3.**

(e) **A noncustodial parent who is ordered to participate in a work release program under subsection (b) is not entitled to any part of the earnings until the noncustodial parent's delinquent child support obligation has been satisfied.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1098, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 11-12-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person confined in a county jail may be required to keep his own living quarters clean and orderly.

(b) A person confined in a county jail upon conviction of a crime may be required to perform general maintenance work and assist in providing other services essential to the administration of the facility or program. As used in this subsection, "general maintenance work" does not include construction, remodeling, or repair of the facility.

(c) An action for declaratory or injunctive relief, or both, may be brought:

(1) against a county official who permits or authorizes a person confined in a county jail to perform construction, remodeling, or repair on any public work (as defined in IC 36-1-12-2); and

(2) by any taxpaying resident of the county in which the work described in subdivision (1) is being performed who is engaged as an employer or employee in the building and construction industry.

The taxpayer is entitled to recover the taxpayer's costs and reasonable attorney's fee if the taxpayer prevails in such suit.

SECTION 2. IC 11-12-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) Any earnings of a person employed under this chapter, less payroll deductions required by law and court ordered deductions for satisfaction of a judgment against that person, **including a judgment regarding delinquent child support described in IC 31-16-16-2**, shall be collected by the county sheriff, probation department, county office of family and children, or other agency designated by the sentencing or committing court. Unless otherwise ordered by the court, the remaining earnings shall be distributed in the following order:

(1) To pay state and federal income taxes and Social Security



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deductions not otherwise withheld.

(2) To pay the cost of membership in an employee organization.

(3) Not less than fifteen percent (15%) of the person's gross earnings, if that amount of the gross is available after the above deductions, to be given to that person or retained for the person, with accrued interest, until the person's release or discharge. **This subdivision does not apply if the person was ordered to participate in the work release program under IC 31-14-12-3 or IC 31-16-12-6 and the person owes a child support arrearage.**

(4) To pay for the person's room and board provided by the county.

(5) To pay transportation costs to and from work, and other work related incidental expenses.

(6) To pay court ordered costs, fines, or restitution.

(b) After the amounts prescribed in subsection (a) are deducted, the remaining amount may be used to:

(1) when directed by the person or ordered by the court, pay for the support of the person's dependents (if the person's dependents are receiving welfare assistance, the appropriate office of family and children or welfare department in another state shall be notified of such disbursements); and

(2) with the consent of the person, pay to the person's victims or others any unpaid obligations of that person.

(c) **Except as provided in subsection (d)**, any remaining amount shall be given to the person or retained for the person according to subsection (a)(3).

(d) If the person:

(1) was ordered to participate in the work release program under IC 31-14-12-3 or IC 31-16-12-6; and

(2) owes a child support arrearage;

any remaining amount shall be forwarded to the clerk of the court for the payment of the person's child support arrearage.

~~(d)~~ (e) The collection of room and board under subsection (a)(4) may be waived.

SECTION 3. IC 12-17-2-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. (a) The bureau shall make the agreements necessary for the effective administration of the plan with local governmental officials within Indiana. The bureau shall contract with:

(1) a prosecuting attorney; or

(2) a private attorney if the bureau determines that a reasonable



contract cannot be entered into with a prosecuting attorney and the determination is approved by at least two-thirds (2/3) of the Indiana child custody and support advisory committee (established under IC 33-2.1-10-1);

in each judicial circuit to undertake activities required to be performed under Title IV-D of the federal Social Security Act (42 U.S.C. 651), including determination of paternity, determination and enforcement of child support, activities under the Uniform Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the contract is with a prosecuting attorney, prosecutions of welfare fraud.

(b) The hiring of an attorney by an agreement or a contract made under this section is not subject to the approval of the attorney general under IC 4-6-5-3. An agreement or a contract made under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

(c) Subject to section 18.5 of this chapter, a county in which the bureau contracts with the prosecuting attorney under subsection (a) may contract with a private organization to provide child support enforcement services."

Page 1, line 1, before "[EFFECTIVE" insert "IC 12-17-2-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS".

Page 1, line 1, after "1999]" insert ": Sec. 18.5".

Page 1, line 2, delete "SECTION" and insert "section".

Page 1, line 3, delete "IC 12-17-2" and insert "**this chapter**".

Page 1, line 5, delete "the bureau" and insert "**a county**".

Page 1, line 6, before "services" insert "**child support enforcement**".

Page 1, line 6, delete "for a pilot program established under this SECTION".

Page 1, delete lines 7 through 18, begin a new paragraph and insert:

"(c) The bureau shall establish a program to allow a county in which the bureau has contracted with the prosecuting attorney under section 18 of this chapter to contract with a private organization to provide child support enforcement services.

(d) The bureau may establish:

(1) a list of approved private organizations with which a county may contract under this section; and

(2) requirements for participation in the program established under this section to assure:

(A) effective administration of the plan; and

(B) compliance with all federal and state statutes,



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regulations, and rules.

(e) A contract between a county and a private organization under this section must include the following provisions:

(1) A provision that records of a contractor operated child support enforcement system are subject to inspection and copying to the same extent the records would be subject to inspection and copying if the contractor were a public agency under IC 5-14-3.

(2) A provision that records that are provided by a contractor to the governmental body that relate to compliance by the contractor with the terms of the contract are subject to inspection and copying in accordance with IC 5-14-3."

Page 2, delete lines 1 through 2.

Page 2, line 3, delete "(g)" and insert "(f)".

Page 2, line 3, delete "January" and insert "July".

Page 2, line 5, delete "pilot".

Page 2, line 5, delete ", including a comparison between:" and insert "established under this section."

SECTION 5. IC 12-17-2-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 26. (a) The Title IV-D agency shall provide incentive payments to counties for enforcing and collecting the support rights that have been assigned to the state. The incentive payments shall be made by the Title IV-D agency directly to the county and deposited in the county treasury for distribution on a quarterly basis and in equal shares to the following:

- (1) The county general fund.
- (2) The operating budget of the prosecuting attorney.
- (3) The operating budget of the circuit court clerk.

(b) Notwithstanding IC 36-2-5-2(b), distribution from the county treasury under subsection (a) shall be made without the necessity of first obtaining an appropriation from the county fiscal body.

(c) The amount that a county receives and the terms under which the incentive payment is paid must be in accordance with Section 458 of United States Public Law 93-647, as amended, and the federal regulations promulgated under the statute. However, amounts received as incentive payments may not, without the approval of the county fiscal body, be used to increase or supplement the salary of an elected official.

(d) Notwithstanding subsection (a), the Title IV-D agency may limit incentive payments paid to a county for child support collected under a contract between the county and a private organization under section 18.5 of this chapter to funds received



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from the federal government.

SECTION 6. IC 31-14-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) If the court finds that a party is delinquent as a result of an intentional violation of an order for support, the court may find the party in contempt of court.

(b) **In addition to any other penalty provided by law**, the court may order a party who is found in contempt of court under this section to **do either of the following**:

(1) Perform community service without compensation in a manner specified by the court.

(2) **Participate in a work release program under IC 11-12-5 for the purpose of using the party's earnings to satisfy the party's child support arrearage.**

(c) **An order issued under subsection (b)(2) may not require a party to participate in a work release program after the party's child support arrearage is paid in full.**

(d) **Unless otherwise ordered by the court, if the court orders a party to participate in a work release program under subsection (b), the party's earnings shall be distributed under IC 11-12-5-3.**

(e) **A noncustodial parent who is ordered to participate in a work release program under subsection (b) is not entitled to any part of the earnings until the noncustodial parent's delinquent child support obligation has been satisfied.**

SECTION 7. IC 31-16-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) If the court finds that a party is delinquent as a result of an intentional violation of an order for support, the court may find the party in contempt of court.

(b) **In addition to any other penalty provided by law**, the court may order a party who is found in contempt of court under this section to **do either of the following**:

(1) Perform community service without compensation in a manner specified by the court.

(2) **Participate in a work release program under IC 11-12-5 for the purpose of using the party's earnings to satisfy the party's child support arrearage.**

(c) **An order issued under subsection (b)(2) may not require a party to participate in a work release program after the party's child support arrearage is paid in full.**

(d) **Unless otherwise ordered by the court, if the court orders a party to participate in a work release program under subsection (b), the party's earnings shall be distributed under IC 11-12-5-3.**

(e) **A noncustodial parent who is ordered to participate in a**

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work release program under subsection (b) is not entitled to any part of the earnings until the noncustodial parent's delinquent child support obligation has been satisfied."

Page 2, delete lines 6 through 17.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1098 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1098 be amended to read as follows:

Page 3, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 3. IC 12-7-2-144.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 144.9. "Private organization", for purposes of IC 12-17-2, has the meaning set forth in IC 12-17-2-3.5.**"

Page 3, line 31, delete "county in" and insert "**prosecuting attorney with**".

Page 3, line 32, delete "with the prosecuting attorney".

Page 3, delete lines 35 through 39.

Page 3, line 40, delete "(b)", begin a new paragraph and insert:

"SECTION 4. IC 12-17-2-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.5.** "

Page 3, line 40, delete "SECTION" and insert "**chapter**".

Page 3, line 41, delete "county" and insert "**prosecuting attorney**".

Page 3, line 41, after "contracts" insert "**under section 18.5 of this chapter**".

Page 4, line 1, delete "(c)", begin a new paragraph and insert:

"SECTION 4. IC 12-17-2-18.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 18.5. (a)**".

Page 4, line 1, delete "county in" and insert "**prosecuting attorney with**".

Page 4, line 2, delete "with the prosecuting attorney".

Page 4, line 5, delete "(d)" and insert "**(b)**".

Page 4, line 7, delete "county" and insert "**prosecuting attorney**".

Page 4, line 13, delete "(e)" and insert "(c)".

Page 4, line 13, delete "county" and insert "**prosecuting attorney**".

Page 4, line 21, delete "governmental body" and insert "**prosecuting attorney**".

Page 4, line 24, delete "(f)" and insert "**(d)**".

Page 4, delete lines 27 through 42, begin a new paragraph and insert:

"(e) **The bureau is not liable for any costs related to a contract entered into under this section that are disallowed for reimbursement by the federal government under the Title IV-D program of the federal Social Security Act.**

(f) **The bureau shall treat costs incurred by a prosecuting**



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attorney under this section as administrative costs of the prosecuting attorney."

Page 5, delete lines 1 through 9.

Renumber all SECTIONS consecutively.

(Reference is to HB 1098 as printed February 25, 1999.)

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